

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.161 of 2021

In
Civil Writ Jurisdiction Case No.6981 of 2019

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1. The State of Bihar through Principal Secretary Education Department, Bihar, Patna.
 2. The Director, Secondary Education, Bihar, Patna.
 3. The Regional Deputy Director of Education Department, Patna.
 4. The District Education Officer, Bhojpur.

... .. Appellants

Versus

Shailesh Kumar, Son of Late Bhola Prasad Resident of 103 Safipur,
Ganichak, Station Raod, Khusrupur, District- Patna.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Hitesh Suman, AC to SC-13
For the Respondent/s	:	Mr. Jagannath Singh, Advocate
		Mr. Deepak Kumar, Advocate
		Mr. Padmanabh Kashyap, Advocate
		Mr. Akash Hari, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2025

In the light of our order dated 18.01.2025, Mr. Yogendra Singh, Director, Secondary Education, Bihar, Patna is present in the Court.

2. Learned counsel for the Appellants Mr. Hitesh Suman submitted that inadvertently on 18.01.2025, statement has been made on behalf of the Appellants to the extent that Respondent has admitted his guilt in writing. Therefore, there is



no admission on behalf of the Respondent insofar as alleged demand and acceptance of illegal gratification.

3. Today, we have specifically posed a question to the learned counsel for the Appellants, in the presence of Director. Both of them submitted that none of the witnesses have been examined in the departmental inquiry. Serious charges levelled against the Respondent insofar as alleged demand and acceptance of illegal gratification and it has not been proved in the manner known to the law like complainant raiding parties/officials/employees should have been cited as a witness and examined in support of the aforementioned alleged charges levelled against the Respondent. On this count, the Appellants have not made out a case so as to interfere with the Learned Single Judge order dated 14.10.2019 passed in C.W.J.C. No. 6981 of 2019. Principles laid down in the following judgments support respondent on the issue of non-examination of relevant witness and violation of principle of natural justice:-

(1) Roop Singh Negi vs. Punjab National Bank & Ors.
(2009) 2 SCC 570,

(2) State of Karnataka vs. Umesh, (2022) 6 SCC 563,

(3) Union of India & Others vs. P. Gunasekaran (2015)



2 SCC 610,

**(4) S.C. Girotra vs. United Commercial Bank & Ors.,
1995 Supp (3) SCC 212,**

**(5) Union of India & Ors. vs. Gyan Chand Chattar,
(2009) 12 SCC 78.**

4. Accordingly, present L.P.A. No. 161 of 2021 stands dismissed. Pending I.As, if any, stands disposed of.

5. At this stage, learned counsel for the Appellants submitted that Respondent is still in service. Having regard to the serious allegations insofar as alleged demand and acceptance of illegal gratification is involved, therefore, matter required to be remanded in the event of quashing orders of penalty on technicality in the light of Hon'ble Supreme Court decision in the case of **ECIL vs. B. Karunakaran** reported in **(1993) 4 SCC 727** and **Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.** reported in **(2011) 5 SCC 142** and **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736.**

6. Disciplinary Authority is hereby directed to take a decision as to whether Respondent shall be put back into service or not or in the alternative, he shall be placed under suspension till completion of afresh inquiry. Such a decision



shall be taken by the Disciplinary Authority within a period of one month from the date of receipt of this order. The concerned Appellants are hereby directed to treat the intervening period from the date of dismissal till reinstatement as a suspension and extend subsistence allowance in accordance with the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 or relevant provision of law and extend monetary benefits. Thereafter, the Disciplinary Authority is hereby directed to complete the disciplinary proceedings from the defective stage and conclude the same within a period of six months from the date of receipt of this order. The intervening period insofar as taking decision to continue the petitioner in service or he should be placed under suspension is required to be regularized in accordance with law in the event of placing him under suspension in the light of our order, in that event from the date of suspension order till passing of afresh final order in the departmental inquiry is to be regularized in accordance with law. In this regard necessary order shall be passed by the Disciplinary Authority/Appointing Authority in the light of relevant provision under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 or relevant provision of law like Bihar Service Code. Such decision shall be



taken within a period of three months from the date of passing afresh order in a departmental inquiry. To the above extent order of the learned Single Judge dated 14.10.2019 passed in C.W.J.C. No. 6981 of 2019 stands modified.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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